

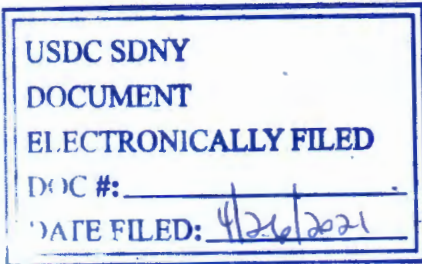


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MEMO ENDORSED

April 26, 2021

4/26/2021
Mr. Binday must go to
Second Circuit, as the
government asserts



Hon. Colleen McMahon
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007

Re: *United States v. Michael Binday*
No. 12-cr-152 (CM)

Honorable Judge McMahon:

Michael Binday has two motions pending before this Court: a 2255/2241 motion to vacate the judgment and a bail motion. The former explains why Binday believes the motion is not a “second or successive” motion and therefore why Binday need not request permission to file the motion from the Second Circuit. The government’s position is that Binday must seek the circuit court’s permission to file the pending motion.

Second Circuit Local Rule 22.2 provides: “(a) Transfer Required. When an unauthorized second or successive application under 28 U.S.C. § 2254 or § 2255 is filed in district court, the district court will transfer it to the circuit court in accordance with 28 U.S.C. § 1631.” Section 1631 more broadly provides for transfer of a civil action to a different court where the action could have been brought when jurisdiction is lacking in the original court.

We request guidance from this Court regarding its view of whether Binday must seek permission from the circuit court to pursue his current 2255/2241 motion. Alternatively, Binday may file a motion explaining his position to the Second Circuit.

Thank you.

Very truly yours,

David Shapiro
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